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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI

Date:

APR 28 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(g)(3) of the  
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(g)(3)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras. He filed an application for adjustment of status to that of a lawful permanent resident based on the fact that he is married to a native or citizen of Cuba, resides with her, was admitted or paroled into the United States after January 1, 1959, and has been physically present in the United States for at least one year.

The director determined that the applicant was inadmissible under INA § 212(a)(1)(A)(iii), finding that the applicant's misuse of alcohol, as evidenced by four arrests for driving under the influence, indicated a pattern of behavior related to alcohol abuse that constitutes a danger to the property and lives of others. The director, therefore, denied the waiver application as a matter of discretion. *Decision of the District Director*, dated September 14, 2006.

Counsel contends that the applicant is not inadmissible and does not need a waiver of inadmissibility because he is not an alcoholic. Counsel argues in the alternative that the applicant's legal permanent resident wife and U.S. citizen mother would suffer extreme hardship if his waiver application were denied.

Section 212(a), 8 U.S.C. § 1182(a), states, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds. —

(A) In general. - Any alien -

...  
(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security]) —

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property,

safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . is inadmissible.

(B) Waiver authorized. — For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

The district director based the finding of inadmissibility under this section of the Act after consultation with the Department of Human Services Centers for Disease Control and Prevention (CDC). The CDC classified the applicant as “Class A” and inadmissible.<sup>1</sup> *Letter from ██████████ Acting Chief*, dated July 19, 2006. Based on the CDC’s letter, the AAO finds that the applicant is inadmissible under section 212(a)(1)(A)(iii) of the Act.

Section 212(g), 8 U.S.C. § 1182(g), reads, in pertinent part:

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate Service office indicating that arrangements have been made to provide the alien’s complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien’s current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). This information is to be filed with the USCIS office with jurisdiction over the Form I-601 waiver application. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient

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<sup>1</sup> See 42 C.F.R. Ch 1. § 34.2(d)(2)(i), (ii), which provides, in pertinent part:

(d) *Class A medical notification.* Medical notification of:

- (2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;
- (ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior.

in the light of such history to demonstrate recovery. *Id.* Upon receipt of the information, the USCIS office will refer the medical report to the U.S. Public Health Service for review and, if found acceptable, the alien will be required to submit such additional assurances as the U.S. Public Health Service may deem necessary in his or her particular case. These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or Service office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

In this case, the applicant filed his I-601 waiver application stating only “DUI” as the reason he was declared inadmissible to the United States. The applicant failed to submit with his waiver application a statement indicating that arrangements have been made to provide the alien’s complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien’s current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). Because the applicant did not submit this information, USCIS did not refer the case to the U.S. Public Health Service for review and the U.S. Public Health Service did not have the opportunity to request any additional information it may have deemed necessary in this particular case. The AAO notes that extreme hardship to a qualifying relative is not the standard by which to evaluate a waiver application that is based on inadmissibility under section 212(a)(1)(A)(iii) of the Act. Accordingly, because the applicant did not submit the required documentation for his waiver application, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.